

1 oftentimes it's put right in the operating agreement.

2 And as I recall, the first draft of the operating
3 agreement was a long and complicated one, and didn't
4 address, I think, the issues among the owners.

5 Q Did the option concept appear in the operating
6 agreement at a later point? I'm not sure I understand.

7 A Yes, it did.

8 Q Okay. In what form did it take in the final,
9 when it finally came to your attention?

10 A I believe it was the second draft of the agreement
11 contained a provision for the Dille children had an option
12 to purchase the stock of Dave Hicks.

13 Q So it was a -- it appeared as an option?

14 A Yes.

15 Q With reference to the closing of the transaction,
16 which I believe took place on March 31st, about when in --
17 when in time did you first -- did you receive the draft that
18 had the call provision in it?

19 A I think it was late in March.

20 Q What was your reaction when you got this draft and
21 saw the provision?

22 A My colleague, Steve Stankewicz, was working with
23 somebody at Barnes & Thornburg, I think a Scott Troeger, and
24 he brought it to me, and my reaction was that it didn't
25 cover -- that was the first time I had seen anything on that

1 subject, and that it didn't cover all the issues.

2 Q What issues, in particular, didn't it cover?

3 A It didn't have any rights for Dave Hicks.

4 Q And what rights in particular?

5 A It had no exit provisions for Dave Hicks.

6 JUDGE CHACHKIN: What was the provisions that were
7 shown to you at that time?

8 THE WITNESS: The option for the Dille children to
9 buy Mr. Hicks' stock.

10 JUDGE CHACHKIN: The Dille children could buy Mr.
11 Hicks; that was it?

12 THE WITNESS: That was it.

13 JUDGE CHACHKIN: There were not put provision at
14 that time?

15 THE WITNESS: No put provisions.

16 BY MR. WERNER:

17 Q You talked about no exit strategy for Dave at --

18 JUDGE CHACHKIN: When could they exercise this
19 option? Was there a date on it?

20 THE WITNESS: Well, if I could see the agreement,
21 I could tell you.

22 JUDGE CHACHKIN: Why don't you show him the
23 agreement? Maybe that will help him. Okay?

24 MR. WERNER: Okay.

25 THE WITNESS: I believe that would be the second

1 draft. Your Honor, the first draft was very cumbersome. It
2 contained a lot of provisions which were, frankly, I think,
3 just irrelevant to this kind of business, so we were trying
4 to make it simpler.

5 JUDGE CHACHKIN: This draft was proposed by this
6 firm, Barnes firm, is that --

7 THE WITNESS: That's correct.

8 JUDGE CHACHKIN: And they represented whom?

9 THE WITNESS: The Dille children.

10 BY MR. WERNER:

11 Q Why don't we do this. Mr. Brown, let me direct
12 your attention to Mass Media Bureau Exhibit No. 58.

13 A Fifty what?

14 Q Fifty-eight.

15 A Fifty-eight.

16 I have 58.

17 Q Do you recognize this?

18 A I do.

19 Q Now, do you recall receiving this letter?

20 A Yes.

21 Q Can you just tell me for the record what the
22 document is that you're looking at?

23 A This is a letter to me from Robert Watson dated
24 March 25, 1994, stating that attached is four operating
25 agreements, revised.

1 Q And does he make any comments about changes, and
2 does this indicate that this is the first operating
3 agreement?

4 A Well, I can read you the second sentence. "The
5 agreement has been substantially revised and many things
6 have been taken out that really were not needed."

7 Q I think you just stated to the Judge a moment ago
8 that it had been your opinion and in the first draft you had
9 seen there had been a number of items that were superfluous,
10 in your estimation.

11 I'd like you to turn your attention, if you would,
12 to Pathfinder Exhibit No. 66.

13 A I have it.

14 Q Now, have you seen this document before?

15 A Yes, I have.

16 Q Would you take a moment to look over the document?

17 A It is what I believe to be the second draft of the
18 operating agreement.

19 Q So this is the agreement that would have
20 accompanied the letter we just looked at?

21 A Yes.

22 Q I direct your attention to page 5 of the
23 agreement.

24 A I'm looking at it.

25 Q And specifically, to Section 7.4 of the document.

1 Now, there appears at subsection (b) a call provision.

2 Is that what you previously referred as the option
3 that appeared in this draft?

4 A Yes.

5 Q Now, I see some notations on the document.

6 Do you know whose notations those are?

7 A Yes. Some --

8 Q Whose are they?

9 I'm sorry to interrupt you.

10 A Some of those notations are mine and some are
11 those of Steve Stankewicz, my colleague.

12 Q Does this reflect yours and Mr. Stankewicz's
13 revisions and changes in the document?

14 A Yes, it does.

15 Q Are these also yours and Mr. Stankewicz's
16 notations in subsection (c)?

17 A Yes.

18 Q So you're making changes in the call provision
19 still at this point?

20 A Yes, we were.

21 Q If I can direct your attention back again briefly
22 to Mass Media Bureau 58, the document that -- the letter
23 that you just looked at.

24 It says in the third sentence if the agreement is
25 acceptable, please make three copies for signature. Please

1 make three copies asking Dave Hicks to date and sign four
2 originals.

3 I take it from your notations -- well, why don't
4 you tell me. Based on your notations on the agreement that
5 we're looking at as Pathfinder 66 and the changes you made,
6 was it your judgment that the document was or was not
7 acceptable --

8 A No.

9 Q -- for signing at this point?

10 A No, the document was not acceptable.

11 Q Were you still -- were you still negotiating the
12 terms of the option at this point?

13 A Yes, we were.

14 Q What does the provision say about the period, the
15 date on which the Dille children could exercise the option?

16 A It says they may purchase it at any time.

17 Q Okay.

18 JUDGE CHACHKIN: Now you didn't change that. You
19 had no objection to that provision?

20 THE WITNESS: I have no -- no notes on that
21 provision.

22 JUDGE CHACHKIN: The only thing you objected to
23 was the purchase price to exercise that option; is that
24 right?

25 THE WITNESS: That -- well, there were some other

1 comments there, but the purchase price, yes.

2 JUDGE CHACHKIN: Now, was this call provision, is
3 this identical insofar as the Dille children being able to
4 purchase an interest of Hicks at any time? Was this
5 included in the first draft?

6 THE WITNESS: No.

7 JUDGE CHACHKIN: What did the first draft say
8 about that, in that regard?

9 THE WITNESS: It was silent, I believe.

10 JUDGE CHACHKIN: Oh, there wasn't any provision
11 dealing with the Dille children exercising an option?

12 THE WITNESS: That's my memory.

13 JUDGE CHACHKIN: So you -- it was at your behest
14 that they put in that provision?

15 THE WITNESS: No, it was at my behest that we deal
16 with what I called the issues among the members, the owners.

17 JUDGE CHACHKIN: Well, how do you explain how that
18 call provision came into this second, this revised
19 agreement?

20 THE WITNESS: That's their proposal.

21 JUDGE CHACHKIN: So this wasn't -- so it was
22 silent in the proposal in Barnes?

23 THE WITNESS: Yes.

24 JUDGE CHACHKIN: But the second proposal now
25 contains this call provision which you did not object to?

1 THE WITNESS: Well, I had some comments to it.

2 JUDGE CHACHKIN: Well, I see you don't have any
3 comments insofar as exercising the option any time. That
4 part of it you didn't have any objection?

5 THE WITNESS: That's correct.

6 JUDGE CHACHKIN: All right. Go ahead.

7 BY MR. WERNER:

8 Q First, to assist the Judge, let me ask you to turn
9 your attention to Mass Media Bureau Exhibit No. 50.

10 A I have it.

11 Q First, let me ask you is that your name that
12 appears as the courtesy copy in the lower left-hand corner?

13 A Yes, it is.

14 Q Do you recall seeing a copy of this document?

15 A I believe I do, yes.

16 Q And could you tell me what the document is?

17 A Well, the document is a letter dated March 7,
18 1994, from Bob Watson to Dave Hicks.

19 Q And what does the letter indicate that it does?

20 A The letter indicates that the attachment, which is
21 Exhibit B to an operating agreement, was erroneously omitted
22 in the draft previously sent to you.

23 Q And your recollection was that you had received
24 the first draft of the operating agreement some time in
25 early March?

1 A Yes.

2 Q I'd ask you to turn your attention, please, to
3 Pathfinder Exhibit 65.

4 Have you found it?

5 A I have.

6 Q Would you like to take a moment to look it over?
7 (Witness reviews document.)

8 A I believe it is the first draft of the operating
9 agreement.

10 Q And why do you believe that?

11 A Well, it's quite a bit longer than the other
12 document. It doesn't contain the provision that we were
13 just looking at.

14 Q Which provision would that be specifically?

15 A Well, that was the call provision.

16 Q And you now --

17 A Or at least I can't find it here.

18 Q In Pathfinder Exhibit 66, we had been looking at
19 Section 7.4 of the agreement. I'd ask you to look at page 9
20 of this Pathfinder Exhibit, compare that with Section 7.4 of
21 Pathfinder Exhibit 65 -- excuse me -- Pathfinder Exhibit 66.

22 Are those the same sections of each of the
23 agreements?

24 A Same sections but different provisions.

25 Q And Pathfinder Exhibit 65, what is the difference

1 between Pathfinder Exhibit 65 and Pathfinder Exhibit 66?

2 A Pathfinder 66, the second draft, contains the call
3 provision, and at 7.4(b), and the first draft, this document
4 No. 65, does not.

5 Q I direct your attention to --

6 A There are some other differences. 7.4(b) is
7 completely different than the second, which is now 7.4(c) in
8 the second draft is completely different than the first
9 draft.

10 JUDGE CHACHKIN: So can you enlighten us as to how
11 the call provision is now included in the second draft? How
12 it came about? What role you played, if any, in the
13 insertion of that provision?

14 THE WITNESS: Well, as I said, Your Honor, it was
15 Barnes & Thornburg and the Dille children's proposal.

16 JUDGE CHACHKIN: Well, you objected, you said, to
17 the first draft.

18 THE WITNESS: Because it didn't contain any --

19 JUDGE CHACHKIN: Exit strategy you said.

20 What was the nature of the exit strategy that you
21 were looking for?

22 THE WITNESS: For Dave Hicks?

23 JUDGE CHACHKIN: Yes.

24 THE WITNESS: I was looking for his right, his
-25 rights, if he wished to exit the investment.

1 JUDGE CHACHKIN: But you didn't suggest the call
2 provision or anything --

3 THE WITNESS: No. No. Those weren't my
4 suggestions.

5 BY MR. WERNER:

6 Q Let me ask this question: Why did you find the
7 call provision unacceptable as an exit strategy for Mr.
8 Hicks?

9 JUDGE CHACHKIN: He didn't find the call provision
10 unacceptable. There wasn't any exit strategy in the first
11 draft. He's not objecting to the second draft. He's only
12 objecting to the manner in which the purchase price was
13 arrived at.

14 MR. WERNER: No, the nature --

15 JUDGE CHACHKIN: Am I correct? Am I correct?

16 THE WITNESS: Yes.

17 MR. WERNER: The nature of my question, Your Honor,
18 is what it was about the -- what it was about the second
19 draft that he believed did not incorporate Mr. Hicks' exit
20 strategy rights. You had asked him about the call provision
21 and I understood you to be asking whether that was --
22 whether that was supposed to be Mr. Hicks' exit strategy.

23 JUDGE CHACHKIN: You can answer that question.

24 THE WITNESS: No.

25 BY MR. WERNER:

1 Q What did you find -- what were you -- pardon me.

2 You had said when you reviewed the second -- well,
3 let me ask you.

4 What was your reaction when you reviewed the
5 second draft?

6 A That was the first time I had seen this proposal,
7 and my reaction was that it didn't cover any rights for Dave
8 Hicks exiting the venture.

9 Q To the extent that the call provision provided for
10 the Dille children to have a right to acquire Mr. Hicks'
11 shares, in what way did that not provide for Mr. Hicks' exit
12 strategy?

13 A Well, it's an option It's an option for the Dille
14 children, and it doesn't give Dave Hicks a right to trigger
15 something if he wishes to leave the investment.

16 Q So what did you do as a result consequence of
17 receiving the second draft?

18 A Well, I talked to Dave Hicks, and put together a
19 document which was a side letter dealing with his rights.

20 JUDGE CHACHKIN: So Dave Hicks was fully aware of
21 the call provision allowing the Dille children to acquire
22 the assets?

23 THE WITNESS: Yes, he was. In fact, he informed
24 me that -- to change the -- was it the minimum purchase
25 price, which we did.

1 BY MR. WERNER:

2 Q And how did you change the minimum purchase price?

3 A I think it was originally proposed at \$50,000 and
4 it was changed to 100.

5 Q And referring back again to Pathfinder Exhibit No.
6 66 at paragraph 7.4(b) on page 5 of the exhibit, is that the
7 minimum purchase price that you're referring to at the end
8 of the call provision paragraph?

9 A Yes.

10 Q If I could ask you to please take a look at Mass
11 Media Bureau Exhibit 65.

12 A I have it.

13 Q And I'd ask you to look at the document.

14 A Well, it's several documents.

15 It's a letter from Scott Troeger of Barnes &
16 Thornburg to Steve Stankewicz, my colleague, transmitting
17 two changed page, proposed page changes in the operating
18 agreement. The letter is dated March 31, 1994.

19 Q And this is a facsimile?

20 A This is a facsimile.

21 Q I'd ask you to turn to page 2 of the exhibit and
22 look at paragraph 7.4(b).

23 A I think mine's page 3?

24 Q Page 3 of the facsimile. It's the second page of
25 the document.

1 JUDGE CHACHKIN: The witness has page 3 of the
2 document.

3 MR. WERNER: Thank you.

4 BY MR. WERNER:

5 Q Looking at 7.4(b), I'd ask you again to look at
6 the last sentence of the paragraph identified as the call
7 provision, and here can you tell me what the minimum
8 exercise price appears as?

9 A One hundred thousand.

10 Q It's your testimony that that change from the
11 \$50,000 that appeared in the last draft to \$100,000 that
12 appears in this one was done at your request per Dave Hicks'
13 instruction?

14 A Yes.

15 There was also a further change in the -- which is
16 underlined -- which was done at my request, which dealt with
17 Dave Hicks' right if he died or became incapacitated.

18 MR. WERNER: Your Honor, at this time I'd like to
19 offer Pathfinder Exhibits 65 and 66.

20 JUDGE CHACHKIN: Any objection.

21 MR. SHOOK: No objection, Your Honor.

22 JUDGE CHACHKIN: The documents are received.

23 //

24 //

25 //

1 (The documents referred to,
2 having been previously marked
3 for identification as
4 Pathfinder Exhibit Nos. 65 and
5 66, were received into
6 evidence.)

7 BY MR. WERNER:

8 Q Mr. Brown, based on Mass Media Bureau Exhibit No.
9 65, which is the facsimile that we were just looked at, it
10 appears that changes were still being made, particularly in
11 the document, as of March 31st; is that correct?

12 A Correct.

13 Q When was the document finally finalized? When was
14 agreements finally reached on the provisions?

15 A March 31st, I believe that was the date of the
16 closing.

17 Q Now, you had indicated before that you had, in
18 response to the receipt of the draft including the call
19 provision, prepared a put proposal; is that correct?

20 A That's correct.

21 Q And how was that received by the Dille children?

22 A If your question is how was it transmitted to
23 them, it was transmitted --

24 Q No.

25 A -- by facsimile. If your question is --

1 Q How did the reaction to it when the received it?

2 A Well, I believe it was transmitted to Barnes &
3 Thornburg and ultimately accepted.

4 Q And after -- after the closing of the transaction
5 on March 31st, what was your involvement? What, if any,
6 further work did you do?

7 A For Hicks Broadcasting of Indiana or Dave Hicks?

8 Q Relative to the transaction.

9 A Put the closing binder together, and that ended my
10 involvement.

11 Q And did you at any time -- did you transmit copies
12 of the documents to anyone?

13 A Yes.

14 JUDGE CHACHKIN: What exhibit is the side
15 agreement? What Bureau exhibit?

16 MR. WERNER: Mass Media Bureau Exhibit No. 61,
17 Your Honor.

18 JUDGE CHACHKIN: If you can take look at that and
19 identify that as the side agreement?

20 THE WITNESS: Sixty-one?

21 MR. WERNER: I was getting to that, Your Honor.

22 JUDGE CHACHKIN: Oh, oh.

23 MR. WERNER: I was going to that. I have a number
24 of other documents I was going to go through.

25 JUDGE CHACHKIN: Oh, I thought you were finishing

1 up with the witness.

2 MR. WERNER: No, no, absolutely not. The purpose
3 of the examination had been to lay the groundwork so that we
4 could go through some of the documents, so I intend to move
5 on to that now.

6 BY MR. WERNER:

7 Q But before we get to the side letter agreement,
8 what I'd like to do is go back and look at some of the
9 documents related to your earlier conversations with Mr.
10 Hicks and Mr. Dille.

11 Can I ask you to -- you said that you had had
12 meetings or conversations with Mr. Hicks and Mr. Dille in
13 September. May I ask you to turn to Mass Media Bureau
14 Exhibit No. 19?

15 A I have it.

16 Q And I ask if you recognize these?

17 A It's three pages of my notes dated September 20,
18 1993.

19 Q And what are they notes of?

20 A Notes of a conference that Dave Hicks and I had.

21 Q We'll discuss them in just a moment, but what I'd
22 like to ask you also to take a look at Pathfinder Exhibit
23 No. 12, or excuse me, Pathfinder No. 13.

24 A I have it.

25 Q And do you recognize this document?

1 A Yes, I do.

2 Q And what is this?

3 A My notes taken on September 21, 1993, in a
4 telephone conference which I had with John Dille.

5 Q And, finally, can I ask you, please, to take a
6 look at Mass Media Bureau Exhibit 21?

7 A What number?

8 Q Twenty-one.

9 A I have it.

10 Q And do you recognize this exhibit?

11 A Yes, I do.

12 Q And what is that?

13 A My notes taken on September 22, 1993, in a face-
14 to-face meeting which I had with Dave Hicks and John Dille.

15 Q Let's look at the notes a little more closely.
16 Can I ask you to turn back to Mass Media Bureau Exhibit No.
17 19?

18 You had stated these were notes of a conference
19 that you had with Mr. Hicks?

20 A Yes.

21 Q This was a face-to-face conference?

22 A I believe it was.

23 Q Do you recall about how long the meeting lasted?

24 A Oh, I think about a hour.

25 A An generally, what did you discuss at the meeting?

1 A Dave Hicks was describing to me his interest in
2 the South Bend station and giving me some background.

3 Q Is the he background the notes that appear at the
4 top of the first page, or why don't you tell me. Why don't
5 we go through them.

6 Do you remember Dave discussing with you the
7 information about Mr. Dille that appears in the first few
8 lines of the exhibit after Mr. Dille's name?

9 A Well, after Mr. Dille's name, it says that Mr.
10 Dille -- I think what this capture is, "went to high school
11 with me and Eric Pimm.

12 Q I see the notation "can't buy station today
13 because of interest in Elkhart, Indiana"?

14 A Yes.

15 Q You had testified previously that you had learned
16 that. Is this when you first learned that?

17 A Yes.

18 Q Down a little bit further below there appears to
19 be a note that says, "John Dille operating now in JOA with
20 John Booth."

21 A I see it.

22 Q Was there any significance to that information, or
23 was that just more background information?

24 A I think Dave explained to me that the station had
25 a JOA agreement with one of the stations owned by John

1 Booth.

2 Q And you have a note about three lines below that,
3 "David Hicks will buy -- will pay for out of JOA."

4 A Yes.

5 Q What did you mean by that?

6 A Well, as I -- as I recall, the -- it was explained
7 to me that the JOA provided that the sales, marketing,
8 collection function was handled by the Dille station, and
9 that they -- you know, in accordance with that agreement.

10 Q And that was the JOA. And the note that "Dave
11 Hicks would pay for the agreement out of the JOA"?

12 A Well, that's -- that's my shorthand way of saying
13 the revenues for the new station would be coming from the
14 JOA.

15 Q I'm going to ask you to turn to page 2, please.
16 You have a note up at the top that says -- well, can you
17 read that to me?

18 A "Dille will operate and Hicks will be responsible
19 for two or three employees."

20 Q Can you explain to me what you meant in that note?

21 A Yes. The Dille station was going to operate the
22 JOA and David Hicks explained to me that he would be the
23 licensee and would be responsible for two or three
24 employees, I believe he told me for the programming of the
25 station.

1 Q So when you wrote this note you intended to
2 capture Mr. Dille's responsibilities under the JOA as you
3 understood it?

4 A As I understood it.

5 Q But Mr. Hicks indicated to you that he was going
6 to be operating the station in all other respects other than
7 those that Mr. Dille was going to handle under the JOA?

8 A Yes.

9 Q Now, you indicated before these were your
10 shorthand way of capturing thoughts.

11 Were the words that you used in these notes your
12 words?

13 A These are my words.

14 Q Are they -- were they Dave Hicks' words?

15 A No.

16 Q So these were notes that you were writing to
17 yourself?

18 A Yes.

19 Q Now, you've got a note that says "No personal
20 liability of David Hicks." Am I reading that correctly?

21 A Yes.

22 Q What did you mean when you wrote that?

23 A Well, I was concerned about what the personal
24 liability of Dave Hicks was in this venture.

25 Q So this note reflects your concern?

1 A This is my concern.

2 Q Okay. This was not -- was this an agreement, did
3 you understand this to be an agreement that Mr. Hicks and
4 Mr. Dille had worked out?

5 A No.

6 Q Down below you have a note that says, "No deal at
7 this time." What does that refer to?

8 A That refers to the fact that the discussions
9 between Dille and Booth, there is no final deal at this
10 time.

11 Q So this was -- refers back to your earlier
12 testimony at the time you understood the deal between Mr.
13 Booth and Mr. Dille had not been finalized?

14 A Yes.

15 Q Now, you have a note a few lines below that.
16 "David Hicks will have responsibilities, licensee of that
17 station."

18 Does this relate to testimony you were giving a
19 few minutes ago about Mr. Hicks' intention to operate the
20 station?

21 A Yes.

22 Q I'd ask you to turn to page 3. Here you have
23 another note on the first line, "Game plan," and can you
24 read the second line for me?

25 A The second line says, "Wait respectable time."

1 Q Okay. What does that entry mean? What were you
2 trying to capture there?

3 A I think I had asked Dave what -- I was asking
4 right from the beginning what the exit strategy was.

5 Q So this was your concern about the exit strategy?

6 A Yes.

7 Q Now, the word -- the phrase "game plan, was that
8 Mr. Hicks'?

9 A No.

10 Q That's your words?

11 A Those are my words.

12 Q Did Dave Hicks use those words in the meeting at
13 all?

14 A I don't believe so.

15 Q So "game plan, wait respectable time" reflects
16 your question to Mr. Hicks about the exit strategy?

17 A Yes.

18 Q Did Mr. Hicks indicate whether he had an exit plan
19 in mind at that point?

20 A No. In fact, I think I recall he -- I was struck
21 by the fact he didn't have an exit plan.

22 Q Well, down below here you have a couple of other
23 entries. Could you read them to me? Why don't you start
24 with the third entry on page 3.

25 A "Request from FCC to permit purchase by," and then

1 it says "FCC," which, of course, doesn't make sense.

2 Q What does that entry mean?

3 A Well, I believe it means that one of the options
4 would be a request from FCC the waiver that was explained to
5 me was necessary for The Dille interest to obtain if it was
6 to purchase the station.

7 Q Okay. And how about the next entry?

8 A "If not obtain, will sell station, probably to
9 someone else as dualopoly."

10 Q Okay. So were these -- were these presented as
11 points of agreement between -- by Mr. Hicks or what do these
12 reflect?

13 A These reflect several possibilities.

14 Q Did you ask Mr. Hicks if he had discussed this
15 with Mr. Dille?

16 A No.

17 Q Did you have any sense at the time you asked him
18 that he had given much thought to the exit strategy?

19 A I think I said my sense was that he had not given
20 much thought to it.

21 Q Now, were these presented as points of agreement
22 that Mr. Hicks had reached with Mr. Dille?

23 A No.

24 Q How were they presented?

25 A They were presented as possibilities.

1 Q Things that he was thinking about and discussing
2 with you, what sort of an exit strategy he may want to
3 approach?

4 A Yes.

5 Q Now, with respect to the second note, "probably to
6 someone as a dualopoly," what was the thinking behind that?

7 A Well, I think, as I recall, this station was
8 losing money. It was relatively small and wasn't viable as
9 an entity just as a stand-alone station. So if somebody was
10 going to buy it, it would probably have to be somebody else
11 in that market.

12 Q And the reference to "dualopoly," does that relate
13 to what you had said earlier about the information you had
14 about the FCC liberalizing its ownership rules to permit --

15 A Yes. My understanding that this is a change that
16 took place and the FCC now allows these combinations of
17 stations in markets.

18 Q Okay. So these notes reflect that you and Dave
19 were talking about potential exit strategy, and one of them
20 was that Mr. Dille had an interest in the station since he
21 had the joint sales agreement in place, and the other is
22 that the station would be valuable as well to someone else
23 in the market?

24 A Yes.

25 Q In your -- in your notations, did you intend to

1 suggest in any way that Mr. Dille and Mr. Hicks had agreed
2 to some sort of a game plan?

3 A No.

4 JUDGE CHACHKIN: These are matters discussed at
5 this meeting; is that what this represents, your
6 contemporaneous notes that --

7 THE WITNESS: Yes.

8 BY MR. WERNER:

9 Q And when you wrote "wait respectable time," was
10 there any belief -- did you know -- withdraw that.

11 When you wrote "respectable time," did you intend
12 to communicate that Mr. Dille and Mr. Hicks had an agreement
13 to wait a respectable period of time to implement whatever
14 plan they might have for the station?

15 A No.

16 JUDGE CHACHKIN: What does it refer to? What was
17 the nature of the station that caused you to write these
18 particular words?

19 THE WITNESS: I was talking with Dave Hicks about
20 what possible down-the-road exit strategies he would have
21 for this station.

22 JUDGE CHACHKIN: Where did this "respectable time"
23 come?

24 THE WITNESS: Those are my words.

25 JUDGE CHACHKIN: Yes, but what caused you to write

1 this? What was the nature of the discussion that caused you
2 to write this?

3 THE WITNESS: Well, he must have said to me wait
4 some time, and then one possibility would be to request from
5 the FCC a waiver.

6 JUDGE CHACHKIN: A waiver permitting who,
7 permitting what?

8 THE WITNESS: Permitting the Dille family to
9 purchase the station.

10 JUDGE CHACHKIN: From Mr. Hicks?

11 THE WITNESS: From Mr. Hicks.

12 JUDGE CHACHKIN: Go ahead.

13 BY MR. WERNER:

14 Q And in addition to that you mentioned as another
15 possibility of selling it to someone else in the market?

16 A Yes.

17 Q So Mr. Hicks' intention wasn't to exit the
18 ownership of the station immediately, but in either event he
19 was going to hold the station for some time, and then he
20 could decide at some point later on what he was going to do
21 with it?

22 MR. SHOOK: Objection; leading.

23 JUDGE CHACHKIN: Sustained.

24 BY MR. WERNER:

25 Q Well, what was your understanding about what, you

1 know, Mr. Hicks was discussing with you when he was
2 discussing what you called the possibility?

3 A Well, I think I had asked him about what the
4 possibility would be for him to exit, to sell the station,
5 and he was giving me a couple of possibilities.

6 Q Looking down at the last entry in the notes, can
7 you tell me what those two lines say?

8 A "We'll meet him with Wednesday, October 22. Dille
9 will call me tomorrow."

10 Q And after this meeting with Mr. Hicks, what
11 happened next?

12 A Well, I think Dille did, Mr. Dille did call me the
13 next day.

14 Q If I could ask you to turn to Pathfinder Exhibit
15 13 now.

16 A I have it.

17 Q You've previously indicated these are your notes
18 from your conversation with Mr. Dille?

19 A Yes.

20 Q And this conversation was in person or by
21 telephone?

22 A By telephone.

23 Q Was Mr. Hicks present?

24 A No, he was not.

25 Q About how long did the conversation last?

1 A About 10 minutes.

2 Q And what was the purpose of the conversation?

3 A Well, I believe that Mr. Dille was giving me some
4 background on the South Bend station, and making
5 arrangements to meet the next day.

6 Q On the fourth line, fourth written line of the
7 exhibit you see what appears to be heading "Broadcasters",
8 and after that there is about 10 or 12 lines; is that right?
9 What do all those notes relate to?

10 A I guess that's my shorthand way of John Dille was
11 explaining to me.

12 Q And what was he explaining at this point?

13 A Giving me some background about the South Bend
14 market, about his situation, and about the changes that the
15 FCC was making in the rules.

16 Q Okay. And so the entry that appears right after
17 the heading "1(AM), 1(FM) in market - originally newspaper
18 business in Elkhart," that information is what?

19 A Well, I believe that's the -- I believe that was
20 Mr. Dille explaining to me the businesses that he had in
21 that South Bend market.

22 Q A little further down there is a note, "Because of
23 1980 added stations, government put too much stations," what
24 does that entry indicate?

25 A Well, I believe he explained to me that during the

1 1980s there were a number of additional stations authorized,
2 and some thought the government had authorized too many
3 stations, and so somewhere they're not profitable in the
4 early 1990s.

5 Q And then the notation in the next line, "1990s
6 ball game changes," what does this series of notes indicate?

7 A Well, I think Mr. Dille was explaining to me that
8 the rules were changing in the nineties for radio stations.

9 Q In what ways?

10 A Well, I see the next line says, "The FCC -
11 dualopoly," so I think he said that the FCC allowed
12 dualopolies, which were two stations in one market; for
13 example, the Airborne/Hicks merger which wouldn't have been
14 permitted earlier.

15 Q And that was a transaction that you worked on?

16 A Yes.

17 Q Now, moving down a little bit there is an entry
18 that says, "South Bend." What do the notes under that --
19 what do you recall that you were discussing at that point?

20 A Well, I don't know if I was discussing anything.
21 I think he was giving me some background.

22 Q And what is the information he was giving you
23 here?

24 A Well, I believe he told me that he had a company
25 by the name of Pathfinder; that the station in South Bend

1 was WLDA; that it had a JOA selling arrangement with the
2 Booth station.

3 Q Let me ask you to turn to page 2. Do the notes on
4 the top half of the page still reflect background
5 information that you were receiving?

6 A Yes.

7 Q It's more background information on the Booth
8 transaction?

9 A Yes.

10 Q There is a notation after that that says -- in the
11 middle of the page -- "Wants to protect kids."

12 Can you tell me what that meant?

13 A Yes. I think Mr. Dille explained to me that he
14 wanted to create an investment opportunity for his children.

15 Q And this came about in what context?

16 A In the context of giving me some background
17 information about the South Bend station.

18 Q Now, you have identified -- you've got below that
19 "non-attributable interest"?

20 A Yes.

21 Q What was that?

22 A Well, I was concerned about the FCC rules and a
23 structure with children's interest, and I believe he
24 explained to me that it was permissible to have children own
25 a minority interest and that interest would be non-

1 attributable.

2 Q You testified earlier that during the course of
3 these conversations the issue of Mr. Dille's children having
4 an ownership interest in the entity that Mr. Hicks would be
5 participating in had come up.

6 Does this refer to that? Is this where you
7 learned about that?

8 A Yes. I think this is the first time I learned
9 about it.

10 Q Now, you had -- the next entry says "Concerns."
11 What is this section?

12 A Well, that's my shorthand way of saying these are
13 my concerns.

14 Q Okay. And what is the first entry there? "What's
15 down the road," what did you mean by that?

16 A I'm thinking about the possibilities of exiting
17 the investment for Dave.

18 Q So this is the same concern that you discussed
19 with Mr. Hicks the day before?

20 A Yes.

21 Q And the next entry, "Lability concerns"?

22 A Yes, I'm concerned about what liabilities there
23 are for Dave Hicks.

24 Q And you had also discussed that with Mr. Hicks the
25 day before?

1 A Yes.

2 Q And you've got an unnumbered entry. What does
3 that say?

4 A It appears to say, "Arms," and I have no idea what
5 it means.

6 Q And then you've got a third numbered entry, "FCC
7 legal."

8 A Yes.

9 Q What is that?

10 A That's my concern that this sort of a structure
11 meets the rules and regulations of the FCC.

12 Q Do you recall what you discussed with Mr. Dille in
13 connection with any of these items?

14 A Well, I recall what I discussed with him regarding
15 the FCC.

16 Q And what was that?

17 A I believe he told me that he had discussed it with
18 his attorney, and that it was permissible to have such a
19 structure.

20 Q And what structure are you referring to?

21 A I'm talking about a structure where his children
22 would have a minority interest in a station in South Bend.

23 Q And did he say what the basis was for --

24 A He said he had spoken to his attorney about it as
25 I recall.

1 Q Turn to page there, there are no notes on page 3.

2 Can I ask you to turn now to Mass Media Bureau

3 Exhibit 21?

4 A I have it.

5 Q And these are your notes of your meeting on

6 September 22nd?

7 A Yes.

8 Q And who was at this meeting?

9 A I believe, Dave Hicks and John Dille came to my
10 office.

11 Q And now by this point you've had your first
12 meeting with Mr. Hicks, and he's given you some background
13 on proposed transactions, and you've had a telephone
14 conversation with Mr. Dille, and he's given you a little bit
15 more background on the deal with Booth; is that correct?

16 A That's correct.

17 Q And what do these notes on the 22nd refer?

18 A Well, the first thing I believe Mr. Dille told me
19 that the FCC lawyer, his FCC lawyer is Alan Campbell, and
20 there is another name there which I believe is the FCC
21 lawyer for John Booth.

22 Q And that's John Quale?

23 A Yes.

24 Q Q-U-A-L-E.

25 A Yes.

1 Q Now, in what context did Mr. Campbell and Mr.
2 Quale's name come up?

3 A In the context of the FCC lawyers that would be
4 involved in the South Bend transaction.

5 Q You've got a note below that that says -- well,
6 can you read it for me? There are three lines after the
7 line --

8 A Yes.

9 Q -- that says, "FCC lawyer John Quale."

10 A "Deal doesn't go to Commission, no hearing, don't
11 believe a problem, been discussed with FCC and blessed."

12 Q And what does that refer to?

13 A I believe that's what was told to me by John
14 Dille.

15 Q You had stated that in the conversation you had
16 had with him on the 21st you asked what the proposed
17 structure of the deal was permissible under the Commission's
18 rules with Mr. Dille's children having a minority interest?

19 A Yes.

20 Q Is this what that refers to or is that --

21 A That's what that refers to.

22 Q Now, again, on this page just below that entry
23 you've got another entry similar to the one in the notes for
24 the 21. It says, "Concerns."

25 Is the meaning here the same as they were in the